

REMARKS

This application has been carefully reviewed in light of the Office Action of March 25, 2005, wherein:

- A. Claims 1-66 were rejected under 35 U.S.C. 103(a) as being unpatentable over Miller (U.S. Patent Application No. 2004/0181877) in view of Waters (U.S. Patent No. 2,792,266); and
- B. Claims 1-66 were rejected under 35 U.S.C. 103(a) as being unpatentable over Greenfield et al. '044 in view of Miller '877.

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Claim Rejections – 35 U.S.C. §103

- A. Turning now to the Office Action, the Examiner rejected Claims 1-66 under 35 U.S.C. 103(a) as being unpatentable over Miller (U.S. Patent Application No. 2004/0181877, hereinafter referred to as “the Miller application”) in view of Waters (U.S. Patent No. 2,792,266, hereinafter referred to as “the Waters patent”).

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The four factors relevant to determining obviousness are: 1) the scope and content of the prior art, 2) the differences between the prior art and the Claims at issue, 3) the level of ordinary skill in the art when the invention was made, and 4) secondary indicia, such as commercial success and copying. *Graham v. John Deere Co.*, 383 U.S. 1, 17, 86 S.Ct. 684, 694, 15 L.Ed.2d 545 (1966). In addition, an examiner addressing obviousness must not take a “piecemeal approach, one in which [the examiner] takes the individual elements, item by item, and tries to show us that they each exist somewhere in the prior art. ‘That all elements of an invention may have been old (the normal situation), some old and some new, or all new, is ... simply irrelevant.’” *Litton Systems*, 728 F.2d at 1443 (quoting *Environmental Designs Ltd. V. Union Oil Co. of California*, 713 F.2d 693, 698 (Fed.Cir.1983)); see also *Avia*, 853 F.2d at 1564 (“That some components of [the challenged patent] exist in prior art references is not determinative. ‘[I]f the combined teachings suggest only components of the Claimed design but not its overall appearance, a rejection under section 103 is inappropriate.’ ”) (quoting *In re Cho*, 813 F.2d 378, 382

5 (Fed.Cir.1987)).

The Examiner stated that the Miller application discloses the invention substantially as claimed. However, the Examiner claimed that the Miller application is silent about a fastener with an attachment device being connected to its support member. The Examiner further stated that the Waters patent teaches a fastener with an attachment device (7,8) being connected to a support member (3), and that it would have been considered obvious to one of ordinary skill in the art to modify the Miller application to include the attachment device as taught by the Waters patent in order to provide a support for one's leg or arm or even as a means to pull oneself up from a lying position.

In order to present a *prima facie* case of obviousness, the Examiner must provide (1) one or more references (2) that were available to the inventor and (3) that teach (4) a suggestion to combine or modify the references, (5) the combination or modification of which would appear to be sufficient to have made the claimed invention obvious to one of ordinary skill in the art. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). The suggestions or teachings to make the claimed invention must be found in the prior art. See Id.

Upon a thorough review of the cited prior art by the Applicant, it is the Applicant's contention that the Examiner misinterpreted the significance of the Miller application. The Miller application discloses a device for assisting a user in getting into and out of sitting and prone positions on a piece of furniture (See the Abstract of the Miller application). The Miller application discloses a handle that is "advantageously shaped to provide a mini-rail that, when in place, extends above and horizontal to and parallel to the top of the mattress" (See the Miller application, page 2, paragraph 28, lines 2-4). Using the handle, a user "may grab a hold of the handle at any point and use the handle to swing his or her legs off of the bed" (See Id; page 2, paragraph 31, lines 13-16). The handle in the Miller application was specifically designed to be a stable bar that allows a user to grab the handle at any point along the stable bar (e.g., ... "the

5 handle includes a cane shape that is advantageously designed to resemble and act like a cane handle in operation" (See Id, page 3, paragraph 56, lines 2-4)). In other words, the handle in the Miller application operates as a "mini-rail next to the bed" to allow a user to "grab hold of and adjust their hand positions during use as necessary" (See Id, page 1, paragraphs 17 and 18).

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The Miller application is to be contrasted with the present invention, where a fastener is included to allow a user to detachably attach a variety of attachments, such as a handle, leg strap, sling, etc. Because the Miller application relies on the fixed stability provided by a large "mini-rail" handle, the Miller application excludes the use of a
15 fastener for connecting flexible attachments, such as a handle. In fact, the background section of the Miller application teaches against any configuration other than a large, fixed, rail-like handle that allows a user to grab the handle along any length of the rail (e.g., "a further disadvantage [of] the handle of most comparable devices is that they are awkward in shape and difficult for individuals using the device to grab a hold of and to
20 adjust their hand positions once they have grabbed the handle" and "they are small and do not offer the user a large surface upon which to place his or her hand or arm" (See Id; page 1, paragraphs 7 and 8)). Because the Miller application specifically discloses using a "mini-rail" as a handle, it does not teach a suggestion to combine or modify the references to include a fastener (where a handle or other device may be attached), and in
25 fact teaches against such a feature.

Because the Miller application expressly teaches against the present invention and does not teach all of the limitations of Claims 1 and 34, the Applicant respectfully requests that the Examiner withdraw this rejection of Claims 1 and 34. Additionally,
30 because neither the invention of the Miller application nor the invention of the Waters patent (either alone or in combination) teach all of the claimed limitations in Claims 1 and 34, the Applicant believes that Claims 2-33 and 34-66, which depend therefrom, are also allowable. Thus, the Applicant respectfully requests that this rejection be withdrawn.

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5 B. Claims 1-66 were rejected under 35 U.S.C. 103(a) as being unpatentable over Greenfield et al. '044 (hereinafter "the Greenfield patent") in view of the Miller application.

The Examiner stated that the Greenfield patent discloses the invention
10 substantially as claimed. However, the Examiner claimed that the Greenfield patent is silent about the pivoting/locking means of the support member as well as the telescoping feature of the support member. The Examiner further stated that the Miller application teaches the pivoting/locking means of the support member as well as the telescoping feature of the support member, and that it would have been
15 considered obvious to one of ordinary skill in the art to modify the Greenfield patent to include the pivoting/locking means of the support member as well as the telescoping feature of the support member as taught by the Miller application in order to adjust the orientation of the stirrup.

20 The Applicant refers the Examiner to the above comments regarding section A. As neither the invention of the Miller application nor the invention of the Waters patent (either alone or in combination) teach all of the claimed limitations in Claims 1 and 34, the Applicant believes that Claims 2-33 and 34-66, which depend therefrom, are also allowable. Thus, the Applicant respectfully requests that this rejection be withdrawn.

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Additional Comments

The Examiner rejected Claims 1-66 in a broad sweep without addressing the limitations as set forth in several claims. For example, the present invention includes a stop mechanism that comprises a slot at the base end of the support member and a
30 projection projecting from the attachment portion. Nowhere does the cited prior art teach a stop mechanism that includes a slot.

Additionally, the present invention includes an attachment that is a handcuff. Nowhere does the cited prior art teach any reference to a handcuff. Furthermore, there

5 would most certainly not be any suggestion or motivation to combine the references to include a handcuff, as the Waters patent is a leg holder, the Miller application is a bed-side rail/handle, and the Greenfield patent is a pediatric stirrup device (for legs).

As another example, the present invention includes an elongated strap as an
10 attachment for connecting between two enhancer devices. Nowhere does the cited prior art can teach any reference to an elongated strap for connecting between two of the handle/stirrup devices. The use of an elongated strap in the prior art would prevent a user from using the cited inventions as disclosed.

15 As yet another example, the present invention includes an attachment that is a body sling with a plurality of attachment parts for attaching with the fasteners of a plurality of enhancer devices, whereby utilization of the body sling allows a body of a user to be elevated above a bed's surface. Nowhere does the cited prior art teach a body sling, or any need or motivation to elevate a user's body above a bed's surface.

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As stated above, none of the inventions of the Miller application, the Waters patent, and the Greenfield patent (either alone or in combination) teach all of the claimed limitations in Claims 1 through 66. In fact, the Miller application teaches against any such combination. Thus, the Applicant respectfully requests that all rejections be
25 withdrawn.

5 **Concluding Remarks:**

The Applicant respectfully submits that in light of the above comments and remarks, all claims are now in allowable condition. The Applicant thus respectfully requests timely allowance of all of the pending claims.

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In the event the Examiner wishes to discuss any aspect of this response, or believes that a conversation with either Applicant or Applicant's representative would be beneficial the Examiner is encouraged to contact the undersigned at the telephone number indicated below.

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The Commissioner is authorized to charge any additional fees which may be required or credit overpayment to deposit account no. 50-2691. In particular, if this response is not timely filed, the Commissioner is authorized to treat this response as including a petition to extend the time period pursuant to 37 CFR 1.136(a) requesting an extension of time of 20 the number of months necessary to make this response timely filed. The petition fee due in connection therewith may be charged to deposit account no. 50-2691.

Respectfully submitted,



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